IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

COCP No. 833 of 2006
Date of Decision: May 15, 2007

Malkeet Singh ..... Petitioner

versus

Satwant Singh ..... Respondent

Present:- Shri Vipin Mahajan, Advocate, for the petitioner

Shri R.P.S. Ahluwalia, Advocate, for the respondent

Shri Arvind Mittal, Additional Advocate General, Punjab.

HEMANT GUPTA, J.

The present contempt petition is directed against Satwant Singh, Station House Officer, Police Station Dhane Ke Banger, Tehsil Batala, District Gurdaspur, alleging willful and deliberate disobedience to the orders passed by this Court on 16.05.2006 granting anticipatory bail to the petitioner.

In FIR No. 115 dated 16.12.2005 under sections 307, 320, 324, 323, 148 and 149 of the Indian Penal Code as well as 25 and 27 of the Arms Act, 1859, certain allegations were leveled against the petitioner and few others. The allegation against the petitioner in the FIR was that on 16.12.2005 at 10.30 a.m., the petitioner fired a short from .12 bore gun towards the complainant with intention to kill him but the complainant took shield of the door and saved himself. The petitioner sought anticipatory bail

from this Court, after his application was rejected by the learned Sessions Judge, inter alia, on the ground that offence under section 307 of the Indian Penal Code has been deleted by the prosecution. This Court passed the following order on 17.02.2006:-

> " Learned counsel contends that offence under section 307 IPC has been deleted vide case diary No.14 dated 24.01.2006 and offence under section 336 IPC has been added. Learned counsel further submits that the injury under section 326 IPC has been attributed to another accused, namely, Charan Singh and that offence under section 336 IPC is bailable.
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> Notice of motion for 23.03.2006.
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> In the meantime, the petitioner, in the event of his arrest, shall be admitted to interim bail to the satisfaction of the arresting officer. He shall, however, join investigation as and when called for by the police and shall comply with all the conditions laid down under Section 438(2) Cr.P.C."

It may be mentioned here that though in the above order it is recorded that vide case diary No. 14 dated 24.01.2006, offence under section 307 IPC has been deleted, but, in fact, it is case diary No. 15 dated 24.01.2006, as per record produced before this Court.

On 16.05.2006, ASI Gurinder Singh instructed learned Assistant Advocate General, Punjab, who stated that investigation qua the petitioner is complete and that he is not required for any further interrogation etc. The interim bail granted on 17.02.2006 was ordered to remain in force for a period of 10 days after the filing of challan or till the disposal of the application for regular bail, whichever is earlier. The said order reads as under:-

> " Learned Assistant Advocate General on instructions from ASI Gurinder Singh states that investigation qua the petitioner

is complete and he is not required for any further interrogation etc.

In view of the above, the order dated 17.02.2006 of interim bail shall remain in force for a period of ten days after the filing of challan or till the disposal of application for regular bail, whichever is earlier".

The grievance of the petitioner is that though offence under section 307 IPC was deleted during the course of investigation but still the petitioner has been arrested for the offence under section 307 of the Indian Penal Code on 26.05.2006 i.e., just after 10 days of making statement before this Court that investigation qua the petitioner is complete and that the petitioner is not required for further interrogation. It was, thus, alleged that the respondent has willfully and intentionally disobeyed the orders passed by this Court in arresting the petitioner for an offence under section 307 IPS as the petitioner could not have been arrested for such offence without the permission of any competent Court. It is alleged by the petitioner that the entire case against the petitioner is actuated by the pressure of the local MLA.

In reply on behalf of the respondent, it has been pointed out that offence under section 307 IPC was deleted at the relevant time as sufficient evidence was not then available and offence under section 336 IPC was added. It is pointed out that on 25.02.2006, on further investigation of the matter, Satinder Singh son of Dalip Singh and Balwinder Singh son of Sardar Singh, both residents of village Kullar, who were also witnesses of the said incident, specifically deposed that the petitioner has fired from his double barrel gun towards Bakshish Singh and others who could only save themselves by ducking under the iron gate of

the house. Thus, offence under section 307 IPC was made out and the petitioner was arrested for the offence under section 307 IPC on 26.05.2006.

The respondent was directed to produce the record so as to find out the circumstances in which offence under section 307 IPC was added subsequently after anticipatory bail was confirmed by this Court so as to assess the bona fides of the action of the respondent. Senior Superintendent of Police, Batala, has produced the Zimni file in respect of FIR No. 115 dated 16.12.2005.

A perusal of the record shows that a complaint was made by the father of the petitioner on 20.12.2005 in respect of false implication of the petitioner for an offence under section 307 IPC. On the said complaint, Deputy Superintendent of Police, Batala, made investigation and addressed a communication dated 18.01.2006 to Senior Superintendent of Police. The Deputy Superintendent of Police has made spot investigation and from fourteen respectables. He concluded that there was a fight amongst the parties and the petitioner has fired in air with his double barrel gun but there was no damage to the life and property and that the offence under section 307 IPC be deleted and section 336 IPC be added. The said report was approved by the Senior Superintendent of Police and the Deputy Superintendent of Police marked it to the Station House Officer. Therefore, the statement was rightly made before this Court that offence under section 307 IPC has been deleted. Zimni No. 30 deals with the duty of ASI Gurinder Singh assigned to attend this Court in anticipatory bail proceedings on 16.05.2006. It has been reported therein that anticipatory bail has been confirmed.

Zimni No. 31 is dated 25.05.2006 recorded by the respondent,

Station House Officer. It has been recorded that during spot inspection it was found that Satinder Singh s/o Dalip and Balwinder Singh s/o Sardar Singh are also eye-witnesses who have deposed about firing by the petitioner from his double barrel gun. On the basis of said statement, petitioner was arrested on 26.05.2006. The petitioner has been admitted to bail by the learned Sessions Judge on 12.08.2006. It has been recorded by the learned Sessions Judge that in the remand papers dated 26.05.2006, it has been reported that order dated 16.05.2006 was not received and when the prosecution was yet to present the challan and there was no regular bail application for disposal by the accused then there was no idea to arrest the accused on 26.05.2006.

Learned counsel for the respondent has vehemently argued that a special report had been sent on 26.05.2006 to the Deputy Superintendent of Police, Batala, regarding the arrest of the petitioner under section 307 IPC, therefore, the arrest of the petitioner was effected on the basis of offence under section 307 IPC in bona fide discharge of his duties.

I have heard learned counsel for the parties and examined the records produced before me. The facts of the case as reproduced above are clear to the effect that the petitioner sought bail from this Court on the ground that offence under section 307 IPC has been deleted. The said aspect was not disputed by the investigating agencies and, in fact, it was stated before this Court that investigation is complete. The learned Sessions Judge has recorded in the order granting bail that in the remand papers it has been pointed out that copy of the order dated 16.05.2006 has not been received, but that is immaterial. Inasmuch as in the absence of said order dated 16.05.2006, the order granting anticipatory bail on 17.02.2006 would be

operative. It is not the case of the respondent that order dated 17.02.2006 was varied or vacated in any manner.

It is apparent from the record that offence under section 307 IPC was deleted on the basis of communication addressed by the Deputy Superintendent of Police after making spot inquiry from 14 respectable. It could not be explained how suddenly on 25.05.2006, Station House Officer goes to the spot and found two other eye-witnesses. The names of said witnesses do not appear in the FIR or during the course of earlier investigations. The statements of the complainant and other witnesses have been considered by the Deputy Superintendent of Police and a conclusion has been arrived at with the approval of the Senior Superintendent of Police as well. Therefore, the arrest of the petitioner on 26.05.2006 is in flagrant violation of the order of grant of bail passed by this Court. The respondent has not been able to explain how the said witnesses were examined without any previous non-disclosure of their names for the last more than five months by any of the parties. Still further, even if the petitioner was to be charged for the offence under section 307 IPC, it was the bounden duty of the respondent to proceed against the petitioner after seeking appropriate orders from the Court as the petitioner was on bail.

Thus, the respondent has violated the order passed by this Court. Therefore, I hold the respondent guilty of civil contempt as defined in section 2(b) of the Contempt of Courts Act, 1971.

May 15, 2007 (HEMANT GUPTA)
ks JUDGE

Malkeet Singh ... Petitioner

Versus

Satwant Singh ... Respondent

Present: Shri Vipin Mahajan, Advocate, for the petitioner.

Shri R.P.S. Ahluwalia, Advocate, for the respondent.

Shri G.S. Cheema, Senior DAG, Punjab.

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Today, when the case was fixed for pronouncement of the order, the respondent has filed an affidavit. In the affidavit, it has been stated that Shri L.K. Yadav, the then Senior Superintendent of Police, District Batala, was not satisfied with the inquiry conducted by the Deputy Superintendent of Police and was also in doubt regarding the veracity of the inquiry conducted by the Deputy Superintendent of Police, therefore, the SSP, orally directed the respondent to conduct further inquiry into the matter.

A perusal of the communication from Deputy Superintendent of Police, Rural Batala, to Senior Superintendent of Police Batala, dated 18.1.2006, shows that the same was perused by the Superintendent of Police and the matter was marked to Station House Officer for necessary action.

Shri Ahluwalia states that on 18.1.2006, Shri Jatinder Jain, IPS, was the Senior Superintendent of Police, District Batala, whereas subsequently, Shri L.K. Yadav has taken over as Senior Superintendent of Police and he was not satisfied with the inquiry.

The report dated 18.1.2006 given by the Deputy Superintendent Police, has been perused by the then Senior Superintendent of Police and marked to Station House Officer. On the basis of the said communication, the statement was made before this Court that the offence

under Section 307 stands deleted against the petitioner. Therefore, it was not open to the respondent to arrest the petitioner for an offence under Section 307 IPC.

I have also heard the learned counsel for the respondent on the quantum of sentence. Shri Ahluwalia, states that though it can be said that the respondent has not taken appropriate steps, as were required of him before arresting the petitioner, but a lenient view be taken and instead of sentence of imprisonment, a sentence of fine be imposed upon him.

After hearing the learned counsel for the parties and keeping in view the fact that the respondent is a Station House Officer and under obligation to maintain law and order, has violated law himself by arresting the petitioner in violation of the order passed by this Court, therefore, I sentence the respondent to two months' simple imprisonment and to pay fine of Rs.2000/- and in default of payment of fine, to further undergo simple imprisonment for one week.

The sentence imposed upon the respondent shall remain suspended for a period of two weeks, to enable him to avail his remedy of appeal.

It is further made clear that it shall be open to the petitioner to seek his remedy of claiming damages for wrongful confinement from a competent Court of law.

A copy of the order be supplied to the respondent forthwith today itself.

15-05-2007 (HEMANT GUPTA)
ds JUDGE